FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 9 1949
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 634

WARREN A. DOLL,

Petitioner,

versus

JOSEPH T. MEYER,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

MARION G. SEEBER,
DELVAILLE H. THEARD,
Attorneys for Petitioner,
Warren A. Doll.

SUBJECT INDEX.

CASES CITED.

CASES CITED—(Continued)

CASES CITED—(Continued)

STATUTES CITED.

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1948.

No. .....

WARREN A. DOLL,

Petitioner,

versus

JOSEPH T. MEYER,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States.

The petition of Warren A. Doll for a review on a writ of certiorari of a decision of the Supreme Court of the State of Louisiana, respectfully shows:

SUMMARY STATEMENT OF MATTER INVOLVED.

For about fifty years, the Supreme Court of Louisiana has declared and decided that all tax titles in the State

can be quieted by complying with the provisions of Louisiana Act 101 of 1898 and its successor statute Louisiana Act 106 of 1934. Similarly, Article 233 of the Louisiana Constitution of 1898 and its corresponding and later Constitutional enactment, Article 10, Section 11, of the Louisiana Constitution of 1921, have always been held by the Supreme Court to apply to all tax sales and all tax titles.

In Louisiana, there are two types of tax titles: a) When the sale for delinquent taxes is made to a third person bidder (Louisiana Act 170 of 1898, Section 63, as amended; Dart's Statutes, Sect. 8490); b) When, in default of an individual bidder at the tax sale, the property is adjudicated to the State (Louisiana Act 170 of 1898, Sect. 53, as amended; Dart's Statutes, Sect. 8441). When it is the adjudicatee, the State, under special statutory authority, (Louisiana Act 237 of 1924 as amended; Dart's Statutes, Sects. 8480 to 8489) may at public auction dispose of any property thus acquired by it for taxes.

In the present case, petitioner Warren A. Doll acquired, in 1947, from the State, a parcel which the State, in default of individual bidders, had bought in, in 1934, on account of delinquent taxes for the year 1932.

Doll caused his title to said property to be quieted judicially, complying strictly with the statutory procedure (previously Act 101 of 1898, now Act 106 of 1934) which the Louisiana Supreme Court for half a century had declared to be applicable to the quieting and confirming of all tax titles.

In the present suit, which Doll instituted to enforce specific performance by defendant Joseph T. Meyer of a contract for the purchase of said parcel from Doll, the Louisiana Court, in its decision on rehearing (November 8, 1948, Tr. p. 41), held that only those tax titles acquired by individual buyers at tax sales were within the scope and intendment of the Louisiana Constitution and tax confirmation statute, and that this remedy is not available to the owner of property purchased from the State and of which the State had been tax adjudicatee in default of individual bidders at the tax sale; this in the face of a great body of Louisiana Supreme Court decisions constituting a rule of property in the State and holding that the tax articles of the Louisiana Constitutions of 1898 and 1921 and the tax confirmation statutes of 1898 and 1934 apply to all tax sales and tax titles without exception.

Petitioner now cites fifteen decisions of the Louisiana Supreme Court: *In re Quaker Realty Company—In re Valloft,* 127 La. 208 53 So. 526; *Baldwin Lumber Company v. Dalferes,* 138 La. 507, 70 So. 493; *Quaker Realty Co. v. Russell,* 134 La. 1022, 64 So. 894, writ of error dismissed, 239 U. S. 635, 36 Sup. Crt. 283, 60 L. Ed. 479; *Maisonneuve v. Dalferes,* 138 La. 527, 70 So. 500; *Ashley Co., Ltd. v. Bradford et al,* 109 La. 641, 33 So. 634; *Quaker Realty Co. v. Citizens Bank of Louisiana,* 131 La. 845, 60 So. 367; *Quaker Realty Co. v. Labasse,* 131 La. 996, 60 So. 661; *In re Quaker Realty Co.,* 122 La. 43, 47 So. 369; *Clayton v. Quaker Realty Co.,* 128 La. 103, 54 So. 486; *Hamburger v. Purcell,* 139 La. 456, 71 So. 765; *Roussel v. Railways Realty Co.,* 132 La. 379, 61 So. 409, 833; *Quaker Realty Co., Ltd. v. Purcell,* 131 La. 495, 59 So. 915; *Atchafalaya Land*

Co. v. F. B. Williams Cypress Co., 146 La. 1047, 84 So. 351, affirmed in 258 U. S. 190, 42 Sup. Crt. Rep. 284, 66 L. Ed. 559; *Ward v. South Coast Corporation et al.*, 198 La. 433, 3 So. 2d 689; *Yurges Realty, Limited v. Jefferson Parish Developers, Inc.*, 205 La. 1033, 18 So. 2d 607.

In each of the above cases, the property in question was a parcel which had been either forfeited or adjudicated to the State for delinquent taxes and at a later date sold out by the State, as in the present case. In each of said decisions it was held by the Louisiana Supreme Court, frequently without discussion and as a matter of established jurisprudence, that the Louisiana tax confirmation statutes (Acts 101 of 1898 or 106 of 1934) or the tax articles of the Louisiana Constitutions of 1898 and 1921, particularly with reference to the constitutional prescription validating such tax acquisitions, applied to and controlled the question of the validity of the title to such parcels.

It is that rule of property, so often applied or taken for granted by it in the past, that the Louisiana Supreme Court, in the case now under consideration, has disavowed and repudiated as to titles adjudicated to the State, to the utter astonishment and dismay of all real estate lawyers in Louisiana, and to the serious injury of those, who, like the petitioner, acting on said rule of property, had purchased tax property from the State, in good faith relying on the jurisprudence as established by the cases above cited.

By its reversal of this established rule, these purchasers from the State, in point of fact, have been deprived of their property, for as is evidenced by the first decision rendered by the Court in the present case, in Louisiana a tax title which cannot be judicially confirmed is not merchantable and therefore practically without value.

STATEMENT AS TO BASIS OF JURISDICTION FOR CERTIORARI.

It is contended herein that the Louisiana Supreme Court cannot thus change a rule of property so long in force and recognized in the State, and that such a decision should be reviewed by this Honorable Court, since it divests vested rights and deprives the petitioner Doll and a large number of other property holders similarly situated of their property without due process of law (see the strong protest filed with the Supreme Court of Louisiana on application for rehearing by a large number of leading lawyers in the City of New Orleans, Tr. p. 55).

Doll, like all these protestants, had acted in reliance on the rule of property based on the many decisions of the Louisiana Supreme Court holding that, if he and they bought property from the State, which the State had previously acquired for delinquent taxes, he and they, upon availing themselves of the tax articles of the Constitutions and the confirmation statutes, would in law be entitled to quiet and protect from all attack and make merchantable, the titles to the properties thus acquired. These

conditions and facts, which are undisputed, furnish the basis for the jurisdiction of this Honorable Court.

Any ruling of a Court which operates, through a change of an established rule of property, to deprive an owner of his property as existing and protected under the previously established jurisprudence and rule, amounts to a clear taking of property without due process of law and is in direct violation of the jurisprudence of this Honorable Court on the subject. *Schell v. Fauché,* 138 U. S. 562, 34 L. Ed. 1040, 11 Sup. Crt. Rep. 376; *Ohio Life Ins. & T. Co. v. Debolt,* 16 How. (U. S.) 416, 14 L. Ed. 997; *Douglass v. Pike County,* 101 U. S. 677, 25 L. Ed. 968; *German Savings Bank v. Franklin County,* 128 U. S. 526, 32 L. Ed. 519, 9 Sup. Crt. Rep. 159; *Louisiana, ex rel. Southern Bank v. Pilsbury,* 105 U. S. 278, 26 L. Ed. 1090.

The title and property right of petitioner Doll in that regard are now specially set up and claimed, and recourse to this Honorable Court for review by certiorari of the decision of the Louisiana Supreme Court in this case, is now sought, under Section 1257 (3) of Title 28 of the United States Code, as amended by the 80th Congress, Second Session, Chapter 646, Public Law 773, effective September 1, 1948.

HOW THE FEDERAL QUESTION WAS RAISED.

There was no federal question in the trial Court. The federal question was first referred to, and petitioner was

first made aware of it, when the point was taken up during the oral argument on rehearing. The matter had not previously been part of the case. Indeed, in its first opinion in this case (April 26, 1948, Tr. p. 17), the Louisiana Supreme Court had applied the tax article of the Louisiana 1921 Constitution and particularly Louisiana Act 106 of 1934 to this case, and denied relief to the plaintiff for the precise reason (later found by the Court to be an error of fact) that petitioner's proof was insufficient under the requirements of said Act of 1934; which shows clearly, that at that time, the Court considered the Louisiana Constitution of 1921 and the confirmation statute of 1934 (Act 106) to be applicable and controlling in the present case.

When the question of changing the rule of property came into the case, petitioner immediately protested, specially raised the federal question which he is now presenting, and urged his objection and plea, in a Brief in which he stated:

> "To say that this formula to make tax titles safe (the Constitutional provisions and the two confirmation acts) applied only when the tax properties were sold to individuals, would be at variance with the main objective of the Constitutional Conventions of 1898 and 1921, which objective was particularly to find a way to put back on the market and especially to restore to the assessment rolls thousands of parcels of real estate which the State had acquired for taxes (in default of third person bidders at the tax sales) and earnestly wished to dispose of. . . . To decide that property bought from the State is not susceptible

> of being confirmed and quieted in the same way as property bought at tax sales by individuals . . . will be an act of injustice to those who bought these parcels from the State in reliance on the established doctrine in the State's jurisprudence . . . that sales to the State as tax adjudicatee were within the scope of the Constitution and the confirming statutes, and could be legally quieted in appropriate proceedings.
>
> "A denial at this later date of that doctrine already established and made a rule of property in so many decisions of the Louisiana Supreme Court, might well operate to deprive these owners of a valuable right of title and property, and might raise a serious question under the federal question. Schell v. Fauche, 136 U. S. 562, 34 L. Ed. 1040, 11 Sup. Crt. Rep. 376; Ohio Life Ins. & T. Co. v. Debolt, 16 How. (U. S.) 416, 14 L. Ed. 997; Douglass v. Pike County, 101 U. S. 677, 25 L. Ed. 963; German Savings Bank v. Franklin County, 128 U. S. 526, 32 L. Ed. 519, 9 Sup. Crt. Rep. 159; Los Angeles v. Los Angeles City Water Co., 177 U. S. 558, 44 L. Ed. 886, 20 Sup. Crt. Rep. 736."

When the case was decided, the Supreme Court did make the change of which petitioner now complains, in said rule of property. Petitioner filed a formal application for rehearing (Tr. p. 44) and also at that time a special plea as to the said federal question (Tr. p. 49). Said application for rehearing was refused without comment, and petitioner's plea as to the federal question was passed over in silence and thus effectively rejected (Tr. p. 58). The present application for certiorari thereupon became inevitable.

DECISIONS OF THE LOUISIANA SUPREME COURT HEREIN.

The decisions of the Louisiana Supreme Court in this matter, though not yet officially reported, will be found (both the decision originally rendered and the decision on rehearing) in Volume 38 Southern Reporter, Second Series, pages 69 to 72.

QUESTION PRESENTED.

Can the Supreme Court of Louisiana, by the effect of its decision on rehearing in this cause, deprive an owner of the vested right to have his title quieted by resorting to a procedure which said Court had held over and over again was legal and appropriate and thus had become a rule of property?

The established jurisprudence, which existed nearly fifty years before petitioner acquired the property from the State, and on which he relied when he made his purchase, constituted, by all fair and reasonable standards, a rule of property; and thousands of such titles, emanating from the State of Louisiana and originating in tax sales to the State had been quieted judicially and in good faith made merchantable, by complying with the procedure authorized in the tax articles of the Constitution of 1898 and 1921 and by the confirmation statutes of 1898 and 1934. During all those years, titles had been acquired from the State, large sums invested, and countless properties transferred by virtue of this settled judicial con-

struction of the Constitution and statutes, which the Supreme Court declared many times applied to the quieting of all tax sales without exception. It was because he knew of this, and relied upon it, that petitioner Doll bought this particular parcel from the State. The question presented by this application for certiorari to the Louisiana Supreme Court, therefore is:

Can the Louisiana Supreme Court destroy such a right of property, by disregarding and in effect overruling a rule of property established by itself in a long line of decisions, which have been for fifty years accepted as a rule of property in Louisiana, and on which particularly the petitioner Doll relied when he purchased said parcel from the State?

When one turns to the text of the decision of the Louisiana Supreme Court on rehearing in this case (38 So. Rep. 2d, at page 71) (Tr. p. 41), one finds that the Court refers to two cases: *Police Jury of Jefferson Davis Parish v. Grace*, 182 La. 64, 161 So. 2, and *Westwego Canal and Terminal Co., Inc. v. Lafourche Basin Levee District*, 206 La. 270, 19 So. Rep. 2d 133. The *Parish of Jefferson Davis* case dealt only with the question of redemption of property from the effect of a sale for taxes. There was and is a special statute (Louisiana Act 170 of 1898, Section 62, as amended; Dart's Louisiana Statutes, Section 8466) which fully covered the right of a former owner and tax debtor to redeem property which the State had acquired at tax sale in default of third person bidders. That *Jefferson Davis Parish* case, at least for that reason, is, as petitioner believes, clearly distinguishable from cases like

the present, which involve no question of redemption whatever, but only the interpretation which the Louisiana Supreme Court during the last fifty years has given to the tax articles of the Constitutions of 1898 and 1921 and the tax confirmation statutes, Acts 101 of 1898 and Act 106 of 1934, in holding that all tax titles without exception can be quieted by resorting to the procedure prescribed by these Statutes.

For example, the doctrine of a case like *In re Quaker Realty Company,* 127 La. 208, 53 So. Rep. 526, which has been the law in Louisiana since 1910, cannot be gainsaid or overlooked.

PETITIONER'S PRESENTATION AND SUBMISSION OF THE MATTER.

The true Constitutional question which the present application presents is not whether the *Parish of Jefferson Davis* case is or is not the last expression of the Louisiana Supreme Court on the question of the redemption of property from tax sale. The real problem is, whether a long line of decisions rendered in Louisiana, interpreting the tax articles of the Constitutions of 1898 and 1921 and the corresponding tax confirmation statutes as applying to the quieting of all tax titles without exception, had created in Louisiana a rule of property on which petitioner Doll had the right to rely, when he made his purchase of the property involved in the present case. Further, if such a rule of property exists, could Doll be deprived of his rights thereunder by any subsequent decision of the Louisiana Supreme Court, any more than by any subsequent statute of the Louisiana Legislature enacted to affect or destroy said property right?

Finally, it cannot be overlooked that the State of Louisiana purchased this property at tax sale in 1934, at which time undoubtedly the law on the subject under consideration had already been established for many years. The *Parish of Jefferson Davis* decision came only somewhat later. So, the State of Louisiana certainly acquired at a time when the doctrine for which the petitioner contends had not been questioned, even as to the right of redemption. As assignee of the State, petitioner Doll is entitled to all the rights of the State.

But, as stated, no question of redemption is involved in the present case; we are dealing with the legal right to have the title of the State as tax purchaser and the resultant title of petitioner Doll as assignee of the State, quieted and confirmed and protected from attack; and on that point, the decisions of the Louisiana Supreme Court, without a single exception, are to the effect that the proceeding to quiet title as formulated in the Constitutions and in the confirmation statutes, apply equally and exactly in the same manner to tax sales made to third-person purchasers and to such a tax sale as we are dealing with here, that is, a tax adjudication made to the State in default of third person bidders.

And it should be noted that the Louisiana Supreme Court has never overruled and indeed has never questioned the correctness of any of the numerous decisions which make up the rule of property on this point, for which petitioner contends in the present case.

In the present case, as petitioner will show, the Louisiana Supreme Court merely makes the mistake of believing that the decisions constituting said rule of property are inapplicable to the present case:

The Court, in its opinion on rehearing in this case, treats the Constitutions of 1898 and 1921 and the statutes of 1898 and 1934 as if they were different, distinct and unrelated; and for that reason, refuses to apply to the Constitution of 1921 and the Statute of 1934 the decisions which constitute said rule of property and which were rendered when the Constitution of 1898 and the Act of 1898 were in force. On this point, the Court in its decision on rehearing in the present case, says:

> "Counsel for plaintiff, appellee, has cited several decisions of this Court rendered before the adoption of the Constitution of 1921 which he claims are pertinent and contrary to the views herein expressed. These decisions were handed down prior to the adoption of the Constitution of 1921 and the passage of Act No. 106 of 1934. We see no necessity to review the articles of the prior constitution and the various acts of the Legislature in effect at the time these decisions were handed down, for the reason that the Constitutional provision Section 11, Article 10 of the Constitution of 1921 which governs the present suit was correctly interpreted in the Grace case, and Act 106 of 1934 merely provides for the quieting of titles in accordance with this provision of the Constitution."

And thus the entire mental process of the Court is exposed and its reasoning divulged.

According to the Court, the Constitution of 1921 stands alone, and the decisions rendered before its adoption have nothing to do with it or its interpretation. Similarly, says the Court, the Act of 1934 relates only to the 1921 Constitution and provides "for the quieting of titles in accordance with this provision of the Constitution".

But the error of the Court's reasoning lies in the demonstrable fact that Article 233 of the 1898 Constitution and Article 10, Section 11, of the 1921 Constitution are not separate and distinct, but are practically identical textually, one being the successor provision of the other; and as they form one continuous body of law, the decisions interpreting and applying Article 233 of the Constitution of 1898 and Act 101 of 1898 are equally applicable to the practically identical text of the 1921 Constitution and the 1934 statute. (The amendments to the 1921 Constitution, Article 10, Section 11 made in 1927 by Act 4 of 1927, and in 1932 by Act 147 of 1932, as can be seen by a mere inspection of the several texts, made no change that could, in any manner, affect the present question.)

Clearly, therefore, the numerous Louisiana decisions which interpreted the Constitution of 1898, Article 233, and which were quoted to the Louisiana Supreme Court in the present case by petitioner's counsel, should not have been disregarded by the Court in studying the scope and application of the almost identical text of Article 10, Section 11 of the 1921 Constitution. Therefore, the Louisiana Supreme Court fell into error when, in its opinion on rehearing herein, it saw "no necessity to review the article of the prior Constitution and the various acts in effect at the time these decisions were handed".

On the contrary, since the 1921 Constitution (Article 10, Section 11) is, to all intents and purposes, identical with Art. 233 of the 1898 Constitution, the rule of property which was created by the numerous decisions rendered whilst the 1898 Constitution and statute were in effect, are not only pertinent, but are controlling, when one seeks to know if the rule of property then created is still in force under the practically identical provisions of the later and current Constitution and statute.

It is clear then, that the rule of property as to the quieting of titles to properties acquired by the State at tax sales and subsequently sold by the State, which was developed in numerous decisions interpreting the tax Articles of the 1898 Constitution and Act 101 of 1898, did not cease to exist or to be pertinent, when another but practically identical Constitution with an almost identical tax confirmation statute (Act 106 of 1934) was adopted. In fact, the Constitutions and the statutes were so similar that when the 1921 Constitution was adopted, the Act of 1898 continued to operate under it until the Act of 1934 was enacted, and said Act of 1898 during those thirteen years (from 1921 to 1934) was resorted to and used as if the Constitution of 1898 was still actually in force.

It is manifest, therefore, that in the decision on rehearing in this cause, the Louisiana Supreme Court erred in considering as unimportant and unrelated, those numerous decisions which applied and interpreted former identical Constitutional and statutory texts. If the Court had considered those decisions, it would have recognized at once the established rule of property for which we con-

tend; and the validity of Doll's title, quieted according to the established jurisprudence and the subsisting rule of property, would have been maintained and decreed.

This Honorable Court, if the writ of certiorari now sought is granted, under familiar principles takes the whole case as on appeal, and accordingly will be able to correct the error of the Louisiana Supreme Court and can properly co-ordinate these several identical texts, and will without doubt conclude that the rule of property formulated by the decisions of the State Supreme Court interpreting the Louisiana 1898 Constitution is still in force under the practically identical text of the 1921 Constitution.

Under that view of the matter, it is believed this Honorable Court will find that the title to the real estate parcel which petitioner Warren A. Doll tendered to the defendant Joseph T. Meyer had been legally quieted, protected against all attacks, and made merchantable and such as the defendant should be compelled to accept.

Wherefore, petitioner Warren A. Doll respectfully prays that a writ of certiorari be allowed; that the decision of the Louisiana Supreme Court herein be reviewed and reversed; and that as held by the trial Judge, there be judgment decreeing that petitioner's title to said real estate is sufficient in law and such as defendant must accept.

And to the same extent as if now specifically demanded, petitioner prays for all such general and additional relief,

as law, equity and the nature and justice of the present proceedings may permit, justify and allow.

MARION G. SEEBER,
DELVAILLE H. THEARD,
Attorneys for Petitioner,
Warren A. Doll.

This is to certify that copies of this petition have been served on opposing counsel on this the ..... day of March, 1949.

.....